



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

**Lisa M. Thomas
140 Main St.**

**Marlborough, MA 01752
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SEPTEMBER 13, 2010**

Regular meeting of the City Council held on Monday, SEPTEMBER 13, 2010 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Elder, Tunnera, Seymour, and Landers. Absent: Clancy. Meeting adjourned at 9:30 p.m.

ORDERED: That the minutes of the City Council Meeting August 23, 2010, **FILE**; adopted.

ORDERED: That the PUBLIC HEARING on the Petition from Massachusetts Electric Co. and Verizon New England Inc. to install new P.5 and relocate P.4 on Madison St., Order No. 10-1002649, all were heard who wish to be heard, hearing recessed at 8:05 p.m.; adopted.

Councilors Present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour, & Landers.

Suspension of the Rules requested - granted

ORDERED; That the Petition from Massachusetts Electric Co. and Verizon New England Inc. to install new P.5 and relocate P.4 on Madison St, **APPROVED**; adopted.

ORDERED: That the PUBLIC HEARING on the On the Application for amended Special Permit from Attorney Gadbois, on behalf of Fore Kicks II Inc., seeking to allow the applicant to serve alcoholic beverages on Site for the following reasons:

- To be competitive with similar recreation centers within the market area;
- To attract state and national events;
- To attract larger regional clients;
- To accommodate clients who desire to hold fund raising events for its teams;
- To accommodate clients who desire to hold private parties for its teams;
- To attract adult teams to participate in adult leagues,

all were heard who wish to be heard, hearing recessed at 8:40 p.m.; adopted.

Councilors Present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Tunnera, Seymour, & Landers.

Councilor Elder abstained

Councilor Vigeant read a disclosure letter

ORDERED: That the Executive Office of Elder Affairs Formula Grant awarded to the Marlborough Council on Aging in the amount of \$38,255.00 to provide supplemental support to local funding for personnel, programming and expenses for purposes outlined in MGL, Chapter 44, and Section 53A, **APPROVED**; adopted.

ORDERED: That the Fire Department transfer request in the amount of \$2,447.82 which moves funds from Firefighter to Additional Overtime and \$641.89 which moves funds from Fire Captain to Additional Overtime to fund coverage for an injured employee, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 12200001-50450 \$2,447.82

Firefighter

Acct. # 12200001-50800 \$641.89

Fire Captain

TO:

Acct. # 12200003-51300 \$2,447.82

Additional Overtime

Acct. # 12200003-51300 \$641.89

Additional Overtime

ORDERED: That item #6, Communication from the Mayor re: following transfers to offset the bond requests:

- Transfer in the amount of \$386,491.00 from various debt service accounts to various capital outlay accounts. This transfer is necessary to fund various departmental equipment needs.
- Transfer in the amount of \$1,091,080.00 from various debt service accounts to DPW Equipment. This transfer will fund DPW equipment.
- Transfer in the amount of \$198,675.00 from various debt service accounts to DPW Projects. The transfer will fund city sidewalk construction.
- Transfer in the amount of \$346,168.00 from BAN City Int. to IS Equipment. This transfer will fund the purchase of equipment in the Information Technology Dept, refer to **REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Retirement Benefits transfer request in the amount of \$22,082.00 which moves funds from Fringes to Sick Leave Buy Back and \$2,261.00 which moves funds from Fringes to Longevity to fund benefits associated with an employee's retirement, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11990006-51500 \$22,082.00

Fringes

Acct. # 11990006-51500 \$2,261.00

Fringes

TO:

Acct. # 61090003-51920 \$22,082.00

Sick Leave Buy Back

Acct. # 61090003-51430 \$2,261.00

Longevity

ORDERED: That item #8, Communication from the Mayor re: transfer request in the amount of \$30,000.00 to move funds from BAN City Int. to Recreation to fund the master plan and design for Memorial Beach, refer to **REPORTS OF COMMITTEE**.

FROM:

Acct. # 17520006-59254

\$30,000.00

BAN City Int

TO:

Acct. # 19300006-58718

\$30,000.00

Recreation

ORDERED: That there being no objection thereto set **MONDAY, SEPTEMBER 27, 2010** as date for a **PUBLIC HEARING** on the Application for Special Permit from Attorney Bergeron on behalf of 110 Pleasant LLC, to alter, extend and change the use of an existing former factory building located at 110-118 Pleasant St. so that it will contain 17 garden style residential condominium units and 1 business office, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Minutes, Conservation Commission, June 3, July 8, and July 22, 2010, **FILE**; adopted.

ORDERED: That the Minutes, Zoning Board of Appeals, August 31, 2010, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, July 27, 2010, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, July 26, 2010, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.

A. Freida Silva, 72 Millham St., other property damage

Reports of Committees:

Councilor Levy reported the following out of the Urban Affairs Committee:

Order No. 10-1002644A - Application for Special Permit from Attorney Bergeron on behalf of Crosspoint Associates, seeking a 24 hour drive-thru window in connection with a bank institution at 133 East Main St. The committee met with the applicant and reviewed documentation including site plans and traffic information. The conditions imposed on this Special Permit are substantially the same as those adopted for the Marlborough Savings Bank with the following changes:

- 24 hour operation of the drive-through ATM shall be allowed.
- The condition requiring the applicant to utilize HVAV equipment with advanced acoustical technology was eliminated.
- Traffic configuration for both site entrances are subject to approval of the Department of Public Works and the Traffic Commission through Site Plan Review in addition to being subject to review after one year.
- Applicant is responsible for any property damage resulting from demolition of the existing building

Recommendation of the Urban Affairs Committee is to recommend approval of the project, and under Suspension of the Rules, to refer to City Solicitor to be put in proper form, as amended, and place item on the September 27, 2010 agenda, 4-0. Councilor Clancy was absent.

The following was reported out of the Wireless Communications Committee:

Order No. 10-1002646A – Application from MetroPCS LLC, to install a telecommunications facility onto an existing building at 157 Union St. A review of the Applicant's folder was conducted and all the inclusions were found to be proper. Councilor Pope did question if all mitigation payments have been made to the Open Space Account, and it would be verified prior to Permit being acted upon. No new testimony was heard and review of the "Decision" was begun covering the Evidence, Findings of Fact and the twelve (12) Conditions that would be applied. Minor changes were made to the wording for clarification.

Recommendation of the Wireless Communication Committee is to recommend approval of the project, and under Suspension of the Rules, to refer to City Solicitor to be put in proper form, as amended, and place item on the September 27, 2010 agenda, 3-0. Councilor Seymour abstained.

Councilor Ossing reported the following out of the Finance Committee:

Order No. 10-1002682 – Transfer \$30,000.00 to move funds from BAN City Int. to Recreation to fund master plan and design for Memorial Beach. The Finance Committee reviewed the Mayor's letter dated September 9, 2010 (item #8 on the 9/13/10 City Council agenda) requesting a \$30,000.00 transfer from city BAN account to Recreation Department account to cover design funding for the Memorial Beach improvements. **Recommendation of the Finance Committee is to approve 4-0.**

Order No. 10-1002680 – Transfer requests as follows to offset bond requests (item #6 on the 9/13/10 City Council agenda):

- Transfer in the amount of \$386,491.00 from various debt service accounts to various capital outlay accounts. This transfer is necessary to fund various departmental equipment needs.
- Transfer in the amount of \$1,091,080.00 from various debt service accounts to DPW Equipment. This transfer will fund DPW equipment.
- Transfer in the amount of \$198,675.00 from various debt service accounts to DPW Projects. The transfer will fund city sidewalk construction.
- Transfer in the amount of \$346,168.00 from BAN City Int. to IS Equipment. This transfer will fund the purchase of equipment in the Information Technology Dept.

Recommendation of the Finance Committee is to approve the transfers.

Order No. 10-1002472A-1 – Department Equipment Bond for \$445,388. The Finance Committee recommended that the Department Equipment bond be denied and that \$389,504 of Department Equipment be purchased using the funding in the existing equipment bond (\$3,013) and the transfer of \$386,491 (Mayor's letter dated September 9, 2010) from the WWTP interest account, BAN for the Sewers and BAN from the City Interest. Two votes are required by the City Council:

- Deny the \$445,388 bond for Department Equipment.

- Approve the transfer of \$210,882 WWTP Interest Account, \$111, 391 Sewer BAN Account and \$64,218 City BAN Account for a total of \$386,491 (Mayor's letter dated September 9, 2010) to the Capital Outlay Account to purchase Department Equipment.

Order No. 10-1002472A-2 – Street Construction Bond for \$9,886,000. The Finance Committee recommended that street projects in the amount of \$2,710,000 be funded. The funding sources include the use of \$45,683 from existing street bonds and the bonding of \$2,664,300. The following vote is required by the City Council:

- Approve a Street Construction Bond for \$2,664,300.

Order No. 10-1002472A-3 – Sidewalk Construction Bond for \$1,100,000. The Finance Committee recommended the Sidewalk Construction bond be denied and that \$200,000 of Sidewalk construction be approved using the funding in the existing sidewalk construction bond (\$1,325) and the transfer of \$198,675 (Mayor's letter dated September 9, 2010) from the BAN city interest, BAN school interest, 1999 School interest and BAN water interest accounts. Two votes are required by the City Council:

- Deny the \$1,100,000 bond for Sidewalk Construction.
- Approve the transfer of \$26,134 BAN City Interest account, \$45,000 BAN School interest account, \$18,901 1999 school interest account, and \$108,640 BAN water interest account for a total of \$198,675 (Mayor's letter dated September 9, 2010) to the Capital Outlay Account to for Sidewalk Construction.

Order No. 10-1002472A-4 – Sewer Construction Bond for \$1,535,000. The Finance Committee recommended that Sewer Construction projects in the amount of \$475,000 be funded. The funding sources include the use of \$19,829 from existing sewer bonds and the bonding of \$455,200. The following vote is required by the City Council:

- Approve a Sewer Construction Bond for \$455,200.

Order No. 10-1002472A-5 – Water Meter Bond for \$200,000. The Finance Committee recommended the approval of a bond for \$200,000 for water meters. The following vote is required by the City Council:

- Approve a Water Meter Bond for \$200,000.

Order No. 10-1002472A-6 – Water Project Bond for \$3,716,000. The Finance Committee recommended that Water Projects in the amount of \$1,626,000 be funded. The funding sources include the use of \$9,322 from existing Water Project bonds and the bonding of \$1,616,700. The following vote is required by the City Council:

- Approve a Water Project Bond for \$1,616,700.

Order No. 10-1002472A-7 – Park Bond for \$864,000. The Finance Committee recommended the approval of a bond for \$110,000 for Park projects. The following vote is required by the City Council:

- Approve a Park Bond for \$110,000.

Order No. 10-1002472A-8 – Design Bond for \$80,000. The Finance Committee recommended the Design Bond for \$80,000 be denied. The following vote is required by the City Council:

- Deny the \$80,000 Design Bond.

Order No. 10-1002472A-9 – Computer Bond for \$350,000. The Finance Committee recommended the Computer bond be denied and that \$350,000 of computers be approved using the funding in the existing computer bond (\$3,832) and the transfer of \$346,168 (Mayor’s letter dated September 9, 2010) from the BAN city interest account. Two votes are required by the City Council:

- Deny the \$350,000 bond for Computers.
- Approve the transfer of \$346,168 BAN City Interest account (Mayor’s letter dated September 9, 2010) to the Capital Outlay Account to for Computers.

Order No. 10-1002472A-10 – Buildings Bond for \$2,980,000. The Finance Committee recommended that Building Projects in the amount of \$2,150,000 be funded. The funding sources include the use of \$200,000 from existing Building Project bonds and the bonding of \$1,950,000. The following vote is required by the City Council:

- Approve a Building Project Bond for \$1,950,000.

Order #10-1002474-1 – DPW Equipment Bond for \$1,236,280. The Finance Committee recommended the DPW Equipment bond be denied and that \$1,091,080 of DPW Equipment be approved using the transfer of \$1,091,080 (Mayor’s letter dated September 9, 2010) from the WWTP principal and interest accounts. Two votes are required by the City Council:

- Deny the \$1,236,000 bond for DPW Equipment.
- Approve the transfer of \$878,006 from the WWTP principle account and \$213,074 from WWTP interest account (Mayor’s letter dated September 9, 2010) to the Capital Outlay Account to for DPW Equipment.

Order No. 10-1002473-1 – Sudbury Street Sewer Bond for \$4,000,000. The Finance Committee recommended the approval of a bond for \$1,800,000 for Sudbury Street sewer project. The following vote is required by the City Council:

- Approve a Sudbury Street Sewer Bond for \$1,800,000.

Councilor Delano reported the following out of the Personnel Committee:

Order No. 10-1002665 – Reappointments of Lee Thomson and Joseph DelGenio to the Fort Meadow Commission for three year terms from date of approval. Recommendation of the Personnel committee is to approve 3-0.

Suspension of the Rules requested - granted

ORDERED: That the Application for Special Permit from Attorney Bergeron, on behalf of Crosspoint Associates, seeking a 24 hour drive-thru window in connection with a banking institution at 133 East Main St., refer to **CITY SOLICITOR TO BE PUT IN PROPER FORM AS AMENDED FOR SEPTEMBER 27, 2010 CITY COUNCIL MEETING**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the appointment of Colleen Hughes to the Marlborough Planning Board for a term to expire the first Monday in February, 2015, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED; That the Application for Special Permit from MetroPCS LLC, to install a telecommunications facility onto an existing building at 157 Union St., refer to **CITY SOLICITOR TO BE PUT IN PROPER FORM AS AMENDED FOR SEPTEMBER 27, 2010 CITY COUNCIL MEETING.**

Councilor Seymour abstained

Suspension of the Rules requested - granted

ORDERED: WHEREAS the Massachusetts School Building Authority has notified each school district of a new program entitled "The Green Repair Program" which reimburses school districts for improvements limited to repair or replacement of roofs, windows and boilers, and WHEREAS the City Council is authorized to enable the City of Marlborough to submit a Statement of Interest to participate in that Program, and WHEREAS the Director of Public Facilities wishes to make improvements to 1) the Marlborough High School for HVAC, roof replacement, and window replacement, and 2) the Francis J. Kane Elementary School for window replacement, NOW THEREFORE the City Council of the City of Marlborough hereby authorizes the Director of Public Facilities to submit a Statement of Interest to the Massachusetts School Building Authority for the above-specified projects, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the Communication from the Chief Procurement Officer regarding the Proposed Order for the Hudson St. Landfill RFP, **FILE**; adopted.

Suspension of the Rules requested - granted

ORDERED: WHEREAS municipal property at the former landfill site located at 402 Hudson Street in Marlborough as shown on Assessors' Map 30, Parcels 4, 4B, 4C and 4D (collectively, "the Property") is currently under the care, custody, management and control of the Department of Public Works, and WHEREAS the City Council of the City of Marlborough has previously been notified by the Commissioner of Public Works that a portion of Parcels 4C and 4D is no longer needed for the specific purpose of a public dump, and WHEREAS the Commissioner of Public Works will be providing the City Council with a notification that a portion of Parcels 4 and 4B is also no longer needed for that specific purpose, NOW THEREFORE, the City Council by a two-thirds majority vote pursuant to the requirements of § 15A of MGL c. 40, hereby transfers to the Department of Public Works, with the approval of the Mayor, the care, custody, management and control of a portion of such Property, to be defined by the Commissioner of Public Works, for the purpose of leasing the Property to construct and operate a tower and associated ground equipment, subject to a Special Permit as may be granted by the City Council, and subject also to a lease as may be subsequently negotiated and executed by the Mayor for the installation of wireless telecommunications facilities, pursuant to City Council Order No. 10-1002675 dated August 23, 2010, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That, pursuant to City Council Order No. 10-1002675 dated August 23, 2010, a portion of the Property, to be defined by the Commissioner of Public Works, at the former landfill site located at 402 Hudson Street in Marlborough, is hereby declared available for disposition by lease for the operation and maintenance of wireless telecommunications equipment, including construction of a tower, pursuant to the provisions of § 16(a) of MGL c. 30B; provided that said declaration is hereby made subject to the following non-exclusive restrictions, including but not limited to (1) an applicant's engineering report for structural suitability, and (2) an applicant's compliance with all federal and state regulations pertaining to the site's former use as a sanitary landfill, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the Junk Dealer's License for Best Buy Store LP located at 769 Donald Lynch Blvd., **APPROVED**; adopted.

Councilor Levy requested to be recorded in opposition.

Suspension of the Rules requested - granted

ORDERED: That the following amended TIF agreement by and between the City of Marlborough and Boston Scientific Corporation, **APPROVED**; adopted.

WHEREAS, the City of Marlborough, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, having a principal place of business at City Hall, 140 Main Street, Marlborough, MA 01752, (hereinafter called the "City"), acting through its City Council which designates and delegates to the City Council President the authority to execute this agreement with Boston Scientific Corporation, a Delaware corporation with a principal place of business at One Boston Scientific Place, Natick, MA 01760 (hereinafter called the "Company")(the "Amendment") which amends the Tax Increment Financing Agreement entered into by the City and the Company dated as of May 25, 2006 (the "Agreement");

WHEREAS, the Company has completed Phase 1 of the Project as described in the Agreement (the "Facility"), and the Project has been approved by the Massachusetts Economic Assistance Coordinating Council (the "EACC") as a Certified Project;

WHEREAS, the Company had reached an employment level of 669 jobs at the Facility as of the date the Facility was approved as a Certified Project;

WHEREAS, the Agreement sets forth employment targets for the Company at the Facility and an adjustable schedule of Exemption Percentages fluctuating with the Company's level of employment at the Facility;

WHEREAS, the Exemption Percentage has been adjusted from year to year according to the terms of the Agreement to the satisfaction of the City and the Company;

WHEREAS, the Massachusetts Office of Business Development, as the staff representative of the EACC, has expressed concerns that the Company's employment level at the Facility for Fiscal Year 2008 did not meet the requirements of the statutes and regulations applicable for the Massachusetts Economic Development Incentive Program (the "EDIP") pursuant to which the Agreement is authorized and governed; and

WHEREAS, the City and the Company have agreed to clarify any possible ambiguities in the Agreement relating to the employment level requirements and provisions of the Agreement.

NOW THEREFORE, the City and The Company, in consideration of the promises contained herein, hereby agree as follows:

1. The Agreement, this Amendment and the Certified Project have been, and shall continue to be governed by the General Laws and regulations of the EDIP that existed at the time the Project received certification by the EACC (the "Governing Law").
2. The minimum level of permanent, full-time jobs at the Facility shall remain at 669. The definition of "permanent, full-time jobs" for purposes of determining if the Company has met this requirement shall be determined pursuant to the Governing Law and shall not include Contract Employees, as defined hereafter, working at the Facility but not directly employed by the Company.
3. For purposes of measuring current employment at the Facility used to determine the correct Exemption Percentage, from year to year, Company employees and third party employees providing services to the Company ("Contract Employees") based at the Facility and performing services to the Company, and earning on an annual basis at least \$25,000 shall all be counted.
4. In addition to the 669 permanent full-time positions described in Section 2 above, the Company will make commercially reasonable efforts to create and maintain at least 331 new full-time positions by December 31, 2010, and to maintain a 50/50 ratio of Company full-time permanent Employees and Contract Employees for the new positions, however there will not be less than 35 new permanent full-time Company Employees.
5. The City and the Company, have been, and remain, as of the date of this Amendment, in compliance with the terms of the Agreement and the provisions of the Governing Law.
6. All other terms and conditions of the Agreement shall remain in full force and effect and any terms herein shall have the same meaning as in the Agreement.

ORDERED: That the reappointment of reappointment of Walter Bonin to the License Commission for a six-year term from date of approval, **APPROVED**; adopted.

ORDERED: That the Meetings of Standing Committees shall not be held on any Election Day, **APPROVED**; adopted.

ORDERED: That a majority of all the members of each Standing Committee shall constitute a quorum. The affirmative vote of at least 3 members of each Standing Committee consisting of 5 members, and of at least 2 members of each Standing Committee consisting of 3 members, shall be necessary to adopt any recommendation to the full City Council, **APPROVED**; adopted.

Councilor Ferro and Levy requested to be recorded in opposition.

ORDERED: That the transfer request in the amount of \$27,098.49 which moves funds from Fringes to Head Clerk associated with an employee's retirement, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500 \$27,098.49

Fringes

TO:

Acct. # 11620002-50550 \$27,098.49

Head Clerk

ORDERED: That City Council Order No. 04-100540 authorizing the appropriation of four hundred ninety five thousand dollars (\$495,000.00) for the purpose of purchasing land known as Frye Land through the issuance of Bonds is hereby rescinded, **APPROVED**; adopted.

Yea: 10- Absent: 1

Yea: Delano, Ferro, Elder, Tunnera, Seymour, Landers, Ossing, Pope, Vigeant & Levy

Absent: Clancy

ORDERED: That the following sum, designated as City appropriations, is hereby reduced as a supplementary budget in the City of Marlborough: one million one hundred sixty one thousand seven hundred fifty nine dollars (\$1,161,759.00), **APPROVED**; adopted.

This sum is to be removed from the budgetary line items as defined below:

Account Number	Description	Amount
13800006-59948	1999 Multi-Purpose	\$792,000.00
13850006-58948	1999 Multi Purpose Int.	\$369,759.00

ORDERED: That all municipal vehicles be marked with the official city seal and numbered on the back for identification purposes, **TABLED UNTIL SEPTEMBER 27, 2010**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:30 p.m.; adopted.